

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 67151)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE PAHROC VALLEY)
HYDROGRAPHIC BASIN (208) NYE)
COUNTY, NEVADA.)

RULING

5088

GENERAL

I.

Application 67151 was filed on January 19, 2001, by Bruce A. and Pamela G. Jensen to appropriate 0.05 cubic foot per second (cfs) of water from an underground source for the stock watering of 500 head of cattle within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.4N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 36.¹

II.

Application 67151 was timely protested by the United States Department of Interior, Bureau of Land Management (BLM) on the following grounds:¹

"The BLM has identified a need at this sight for wild horses and wildlife. The water at this point of diversion would provide water for wildlife and wild horses. As of yet, the applicant has not signed a rangeland improvement agreement with the BLM for the purpose of allowing use from this rangeland improvement for watering wild horses and wildlife in this area. Once a rangeland improvement agreement is signed, then naturally, the BLM would apply to the State Water Engineer for permit to apply for a water right, the same as the applicant has. 43 CFR 4120.3-9 states that the USA will perfect a water right according to the laws of the state for every range improvement that is placed on public lands. Our legal water right accessible to us, to comply with

¹ File No. 67151, official records in the Office of the State Engineer.

federal law accorded to us by the state, is currently for wild horses and wildlife."

FINDINGS OF FACT

I.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.²

By letter dated January 30, 2001, the BLM was requested to provide the Office of the State Engineer with information regarding the current range permittee for the place of use described under the subject application. A timely response was received from the BLM, which indicated that Bruce A. and Pamela G. Jensen were permitted to place 545 head of cattle upon the Sunnyside grazing allotment which contains the subject place of use.¹ The State Engineer finds that the applicants are legally entitled to place livestock upon the place of use described under Application 67151.

II.

Application 67151 was filed to appropriate underground water from an existing well, which is located within the SE¼ SW¼ of Section 36, T.4N., R.61E., M.D.B.&M.¹ The State Engineer finds a determination was made through an examination of the records of the Office of the State Engineer that an existing certificated permitted water right, Permit 7057, Certificate 1216, is currently appurtenant to this existing well site. Permit 7057, Certificate 1216, was filed on February 26, 1924, by the Adams-McGill Company to appropriate 0.05 cfs for stockwatering purposes. A certificate was issued under Permit 7057 on September 10, 1926, for 0.025 cfs. A series of title transfers have occurred under this permit with the C-B Land and Cattle Company recognized as the current owner of

² NRS § 533.503(1).

record in the Office of the State Engineer.³ The State Engineer finds that the single existing water right appurtenant to the White River well is currently held in the name of the C-B Land and Cattle Company.

III.

Every water right permit that is issued by the State Engineer contains conditions that are contained within the permit terms. By correspondence dated June 4, 2001, Bruce Jensen informed the State Engineer that the intent of Application 67151 was to obtain a stock watering permit in his name in the event he was unable to establish title to Permit 7057, Certificate 1216.¹ The State Engineer finds that Permit 67151 can be issued with the condition that it must be withdrawn should the applicants obtain title to Permit 7057, Certificate 1216.

IV.

Application 67151 was protested by the BLM partly on the grounds that its proposed point of diversion has been identified as a potential source of water for range horses and wildlife.¹ The State Engineer finds that the application before him requests an appropriation of underground water for stockwatering purposes only, and that any need for an appropriation of additional water from this well site for horses and wildlife purposes can be requested through the submittal by the BLM of a water right application for such purpose.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

³ File Number 7057, official records within the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

Application 67151, if approved, would allow the current range permittee to appropriate underground water for stockwatering purposes upon the federal range. The State Engineer concludes that the applicants have met the criteria established under NRS § 533.503 and the approval of Application 67151 would not threaten to prove detrimental to the public interest.

IV.

The approval of Application 67151 would allow the permitted federal range user to appropriate underground water from a well site that is held under an existing certificated stock-water permit. Title to this existing water right remains in the name of a previous owner, which is not recognized as the legal grazing allotment permittee. Since this senior water right cannot be used until the title question is resolved, the State Engineer concludes that a need exists to provide water for stockwatering purposes under Application 67151.

⁵ NRS § 533.370(3).

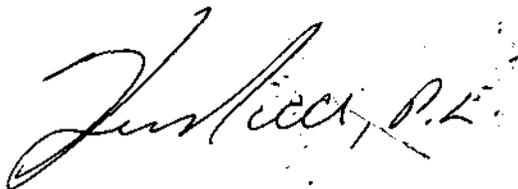
v.

Application 67151 and Permit 7057, Certificate 1216, describe identical points of diversion. Should the applicants succeed in transferring title to Permit 7057, Certificate 1216, into their names, the State Engineer concludes that the need to appropriate additional water under any water right granted under Permit 67151 may cease, necessitating its withdrawal.

RULING

The BLM's protest to Application 67151 is hereby overruled and Application 67151 is approved subject to existing rights and payment of the statutory permit fees and the condition that Permit 67151 must be withdrawn in the event that the permittees' or a successor-in-interest acquire title to Permit 7057, Certificate 1216.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 10th day of
January, 2002.